

FACT SHEET

DECEMBER 1998

The Clean Water Act

History of the CWA

Today's Clean Water Act (CWA) was shaped by over 70 years of legislation protecting water resources. In 1899, the Rivers and Harbors Act was enacted to protect the nation's waters and promote commerce. The Water Pollution Control Act of 1948 was created to offer Federal technical assistance and funds to States wishing to protect their water quality. In 1965, the Water Quality Act (WQA) was enacted to charge States with setting water quality standards for interstate navigable waters. In 1972 the Federal Water Pollution Control Act (FWPCA) strengthened the WQA's water quality standards and established a regulatory structure for controlling discharges of pollution into waters of the United States. The FWPCA, which was commonly known as the "Clean Water Act," made it illegal to discharge any toxic or non-toxic pollution without a permit, encouraged the use of the best available technology for pollution control, and provided Federal funding for constructing sewage treatment plants. The FWPCA also directed States to set water quality standards for waters other than those designated as interstate navigable waters, and to implement wetlands protection programs.

A 1977 amendment to the FWPCA, which was titled "The Clean Water Act," emphasized control of toxic pollutants and established a program to transfer the responsibility of Federal clean water programs to the States. Under the CWA, pollutants can include dredged materials; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into water (i.e., wastewater, including storm water runoff). This definition excludes sewage from vessels; materials injected into a well during oil or gas production; or water extracted from a well during oil and gas production and then disposed of in a well. Toxic pollutants are defined as pollutants or combinations of pollutants which, after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, will cause harm to public health or death. Toxic pollutants include 63 chemicals and classes of chemicals listed in Title 33 U.S.C. § 1317 (a)(1).

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There have also been numerous other amendments to the CWA in an effort to gradually implement increasingly stricter standards in its various programs. Ten years after the CWA was enacted, the Water Quality Act of 1987 focused on stricter regulation of toxic chemicals from industry, acid rain, and reduction of "non-point source" pollution discharges like agricultural runoff and urban storm water runoff. The term "point-source" is defined as "any discernible, confined, and discrete conveyance" such as a pipe or conduit.

On January 9, 1998 the Environmental Protection Agency (EPA) proposed additional amendments to the CWA, which will further eliminate discharges of pollutants under the National Pollutant Discharge Elimination System (NPDES), as the CWA continues to evolve and clean up waters of the United States.

How Is the CWA Structured?

The CWA can be found in Title 33 USC, Chapter 26, "Water Pollution Prevention and Control," or Title 33 USC parts 1251-1387. Subchapter I contains subsections declaring the policy and goals of the CWA, and provisions for clean water research and related programs. Subchapter II deals with the construction of waste water treatment plants and Federal grants to help pay for such construction. Subchapter III contains the basic structure for CWA standards such as effluent limitations, water quality standards and implementation plans, and limits on thermal discharges.

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Water Facts

Most of the Earth's water (some 97%) is stored in the ocean as salt water. Nearly all of the fresh water is frozen in the polar ice sheets; less than 1% of the Earth's water is fresh and accessible in rivers, lakes, or under ground. About half of the U.S. population obtains its drinking water from rivers and lakes and the other half taps underground water sources. In the U.S., the five Great Lakes represent about 95% of all fresh water above ground. The U.S. has 3.5 million miles of rivers and streams, 41 million acres of lakes, and nearly 300 million acres of wetlands (most in Alaska). Clean water is also vital to commerce: the nation's \$45 billion commercial fishing and shellfishing industry relies on clean water for products that are safe to eat. The average American now eats 15 pounds of fish and shellfish every year. In addition, the soft drink industry alone uses over 12 billion gallons of clean water annually to produce products valued at more than \$50 billion.

Subchapter III also provides enforcement programs to ensure proper compliance with the various CWA standards.

Subchapter IV establishes the permits and licenses programs, such as the NPDES permit program for controlling storm water and other pollution discharge, and the "Section 404" permit program for wetlands protection. Subchapter IV also contains a provision for the use or disposal of sewage sludge and criteria for ocean discharging. Subchapter V contains other general provisions and Subchapter VI establishes a revolving funds program for State water pollution control.

Regulating Authorities

The U.S. Army Corps of Engineers (USACE) and U.S. Environmental Protection Agency (EPA) are the two Federal authorities responsible for implementing the CWA. Some states have also been delegated authority by EPA for CWA permitting and enforcement. Therefore, complying with the CWA may involve compliance with both Federal and State regulations.

EPA Regulations

EPA's CWA regulations are located in two different subchapters of Title 40 Code of Federal Regulations (CFR). The first part is contained in Chapter I, "Environmental Protection Agency," Subchapter D, "Water Programs," cited as Title 40 CFR Parts 104-140. In addition to many other requirements, these regulations:

- set guidelines for permitting discharge of storm water under the NPDES;

- contain a list of hazardous substances;
- establish reportable quantities of hazardous substances when such substances are released or discharged;
- provide State permitting program requirements; and
- establish procedures for adopting State water quality standards programs. Guidelines are also provided for standard procedures for analyzing pollutants.

The second part of EPA's CWA regulations, contained in Subchapter H, "Ocean Dumping," are more specifically cited as Title 40 CFR Parts 230-238. This section outlines EPA's delegation of the permitting authority for disposal of dredged and fill material to the USACE.

USACE Regulations

The USACE is responsible for several permitting and enforcement functions dealing with building in U.S. waters and discharging dredged or fill material into U.S. waters. USACE regulations for building or working in navigable waters of the United States are authorized by the Rivers and Harbors Act of 1899. These regulations often go hand in hand with Section 404 of the CWA, which establishes the USACE permit program for discharging dredged or fill material. The regulations are often used together because building in navigable waters of the United States also constitutes discharging dredged or fill material into waters of the United States. In addition to regulating construction or work being done in navigable waters of the United States, USACE regulates discharging into wetlands through the "Section 404" permit program. For more information about the "Section 404" permit program and wetlands protection, see NEPA Call-In Factsheet, "Wetlands Protection," December 1996.

Effluent Limitations and the NPDES

The CWA established limits and guidelines on effluents and requires states to issue NPDES permits (based on 33 USC §1342 and the effluent limitations). An effluent limitation is a limit on the quantity, discharge rates, and concentration of each pollutant a facility may discharge into waters of the United States. Under the CWA, all municipal and industrial point sources of water pollution are subject to effluent limitations unique for each discharger.

The NPDES is the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements. The NPDES program requires permits for the discharge of pollutants from any point source into waters of the United States. Compliance with the terms of NPDES permits leads to attaining and maintaining water quality standards of a particular area. For

example, if a construction site is proposed, consideration must be given to the liquid runoff and leaching potential of undesirable chemicals, and an NPDES permit will likely be required. The NPDES program also requires, in most cases, that owners and operators of any treatment works have a permit for treating domestic sewage. Discharges must comply with all terms and conditions of an EPA, State, or local permit.

States normally have wastewater discharge regulations similar to the NPDES program. EPA delegates authority to the States for the regulation of NPDES discharge permits. These permits are often joint permits issued pursuant to both Federal CWA and State legislation. Frequently, the State will not administer the NPDES program but will issue a State permit even though EPA has issued an NPDES permit. The States and EPA normally cooperate in the permit issuance process to ensure that the two permits are consistent, but there may be differences in monitoring requirements and the number of pollutants limited. These requirements normally do not conflict but may require additional sampling and dual reporting.

Federally owned industrial facilities must be permitted under NPDES for storm water runoff. Types of facilities may include manufacturing, storage facilities such as warehouses, or motor pools. If a facility is mainly used as an office building, no NPDES permits are currently required.

EPA Storm Water Coordinators

Storm water coordinators are regional EPA representatives who act as liaison between State NPDES-delegated agencies and the EPA. Storm water coordinators are the point of contact for specific information on NPDES Federal and State requirements for each region or state.

EPA Region	Contact	Phone
1.	Thelma Hamilton	(617) 565-3569
2.	Sergio Bosques	(212) 637-3717
3.	Elaine Harbold	(215) 566-5744
4.	Gina Fonzi	(404) 347-3012
5.	Peter Swenson	(312) 886-0236
6.	Brian Burgess	(214) 665-7534
7.	Ralph Summers	(913) 551-7418
8.	Vernon Berry	(303) 312-6234
9.	Eugene Bromley	(415) 744-1906
10.	Joe Wallace	(206) 553-8399

Construction Site Permitting

Currently under the NPDES, all construction sites that disturb at least five acres of land must be permitted. In states that have been delegated NPDES permitting authority, permit applications must be submitted to the appropriate state agency. For states that do not have this authority, EPA has issued NPDES General Permits for Storm Water Discharges from Construction Sites (February 17 and March 31, 1998, Federal Register).

The General Permits program requires the development of a storm water pollution prevention plan according to the EPA document, "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices." Contact your Regional EPA storm water coordinator or NEPA Call-In to determine which states fall under General Permits for Construction Activities, and how to comply with the conditions of the permits. Additional information about the NPDES is available from the EPA's Storm Water Hotline at (800) 245-6510.

Amendments to the NPDES were proposed by EPA in January 1998. The proposed amendments will implement Phase II of the storm water program, and supersede an August 1995 Phase II rule (Phase I regulates storm water discharges from large municipalities and industrial activities). The new Phase II regulations will expand the existing NPDES program to include storm water discharges from municipalities with populations less than 100,000, and construction sites that disturb at least one acre of land. The new regulations will require NPDES permits for more GSA construction actions than required by the current regulations. Additional information about the amendment is contained in the April 1998 edition of the Environmental Regulatory Digest available on the NEPA Call-In World Wide Web site (<http://www.gsa.gov/pbs/pt/call-in/nepa.htm>) or by contacting NEPA Call-In.

Who Is Responsible for Construction Permits?

According to the March 31, 1998, Federal Register Notice, "Final NPDES General Permit for Storm Water Discharges From Construction Activities," the person who has operational control of construction project plans and specifications, or has day-to-day operational control of those activities at a project is responsible for NPDES permits. There may be more than one person for a single construction site with responsibility for obtaining and ensuring compliance with the conditions of any applicable NPDES permits.

GSA Responsibilities

The CWA contains special provisions mandating certain requirements for Federal agencies and facilities. Title 33 USC Part 1323 of the CWA, "Federal Facilities Pollution Control," specifies that Federal facilities and employees are not exempt from any part of the CWA. Furthermore, each officer, agent, or employee of any department, agency or instrumentality of the executive, legislative, and judicial branches of the Federal government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants:

"in the performance of his official duties, shall be subject to, and comply with, all Federal, State, and interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges."

This section also mandates that Federal agencies with facilities or property utilizing Federally owned wastewater treatment facilities must develop wastewater control system programs according to Title 33 USC Part 1314(d)(3). The program must include an inventory of property and facilities that could utilize the innovative treatment processes and techniques that are outlined in Title 33 USC Part 1341.

Federal agencies are also required to follow guidelines in Title 33 USC Part 1368, "Federal Procurement." This section of the CWA prohibits Federal agencies from contracting with any individual convicted of CWA violations if the contract is to be performed at any facility at which the violation took place, and if the facility is owned by that person. Figure 1 presents common GSA activities and pairs them with CWA compliance obligations.

Figure 1: Common Activities Requiring CWA Permits

Activity	Permit Type	Contact
Discharge of dredge or fill material into a wetland	CWA Section 404 Permit	Army Corps of Engineers District Office
Construction sites with at least 5 acres of disturbed land	NPDES general storm water permit	Approved State Program or EPA
Transportation-related facilities that have equipment cleaning and vehicle maintenance:		
Railroad/Light Rail/Other Passenger Transit Facilities such as Motor Pools	NPDES general storm water permit	Approved State Program or EPA
Trucking and Warehousing Facilities	NPDES general storm water permit	Approved State Program or EPA
Other industrial activities with potential for storm water exposure:		
Shipping/Receiving	NPDES general storm water permit	Approved State Program or EPA
Warehousing/Storage	NPDES general storm water permit	Approved State Program or EPA
Print shops	NPDES general storm water permit	Approved State Program or EPA
Steam electricity facilities	NPDES general storm water permit	Approved State Program or EPA
Hazardous waste treatment/storage/disposal facilities	NPDES general storm water permit	Approved State Program or EPA
Other Activities:		
Any end-of-pipe discharges of pollutants into waters of the United States (point source discharges)	NPDES permit	Approved State Program or EPA

CWA and NEPA

Through the National Environmental Policy Act (NEPA), GSA is required to evaluate all actions for their potential to affect the human environment. The NEPA analysis of an action's impact on surface water or ground water resources will require consideration of CWA requirements. Compliance with the CWA may only entail ensuring proposed activities are properly permitted with local, State, and Federal agencies. For example, permits are issued under the condition that certain measures will be in place to reduce the amount of pollution being discharged. Compliance may also entail consulting with local, state, or Federal agencies that have responsibility for CWA implementation; discussing any potential impacts the action may have on water quality issues; and any mitigation that would be required under the CWA as a result of the action. An Environmental Assessment (EA) or Environmental Impact Statement (EIS) should include documentation of compliance with CWA requirements.

References

Applied Principles of Hydrology, John C. Manning, 1997.

Clean Water Act, Chapter 26, "Water Pollution Prevention and Control," Title 33 U.S.C. §§ 1251-1387.

"Final NPDES General Permit for Storm Water Discharges From Construction Activities," Federal Register, February 17 and March 31, 1998.

"National Pollutant discharge elimination System—Proposed Regulation for Revision of the Water Pollution control Program Addressing Storm Water discharges; Proposed Rule," Federal Register, Volume 63, Number 6, January 9, 1998.

"Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, EPA833R92001, Oct. 1998.

U.S. Environmental Protection Agency, Office of Water, Clean Water Act Internet page (<http://www.epa.gov/owow/cwa/index.html>).

For More Information

A copy of the CWA can be found on the NEPA Call-In web page at www.gsa.gov/pbs/pt/call-in/erlsub2.htm. The USACE regulatory program under the CWA can be found at www.wetlands.com/regs/tlpgeo2c.htm.

Information on the CWA can also be found on the EPA, Office of Water, web page at www.epa.gov/owow/cwa/index.html.

For specific information on how the CWA may apply to your facility, contact NEPA Call-In at 202-208-6228.

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